

TERRELL RANEY, )  
)  
Plaintiff, )  
)  
v. ) No. 4:07CV1150 CDP  
)  
JASON CRAWFORD, et al., )  
)  
Defendants. )

This matter is before the Court upon the motion of Terrell Raney (Registration no. 1030004), an inmate at Potosi Correctional Center, for leave to commence this action without payment of the required filing fee [Doc. #2]. For the reasons stated below, the Court finds that plaintiff does not have sufficient funds to pay the entire filing fee and will assess an initial partial filing fee of \$8.26. See 28 U.S.C. § 1915(b)(1). Furthermore, after reviewing the complaint, the Court will order the Clerk to issue process or cause process to be issued on the complaint.

Additionally, plaintiff has filed a motion for preliminary injunction alleging that he has been repeatedly assaulted and harassed by defendants. The Court will also order defendants to show cause why plaintiff's motion for preliminary injunction should not be granted.

### **28 U.S.C. § 1915(b)(1)**

Pursuant to 28 U.S.C. § 1915(b)(1), a prisoner bringing a civil action in forma pauperis is required to pay the full amount of the filing fee. If the prisoner has insufficient funds in his or her prison account to pay the entire fee, the Court must assess and, when funds exist, collect an initial partial filing fee of 20 percent of the greater of (1) the average monthly deposits in the prisoner's account, or (2) the average monthly balance in the prisoner's account for the prior six-month period. After payment of the initial partial filing fee, the prisoner is required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. 28 U.S.C. § 1915(b)(2). The agency having custody of the prisoner will forward these monthly payments to the Clerk of Court each time the amount in the prisoner's account exceeds \$10, until the filing fee is fully paid. Id.

Plaintiff has submitted an affidavit and a certified copy of his prison account statement for the six-month period immediately preceding the submission of his complaint. A review of plaintiff's account indicates an average monthly deposit of \$28.75, and an average monthly balance of \$41.28. Plaintiff has insufficient funds to pay the entire filing fee. Accordingly, the Court will assess an initial partial filing fee of \$8.26, which is 20 percent of plaintiff's average monthly balance.

## **28 U.S.C. § 1915(e)**

Pursuant to 28 U.S.C. § 1915(e)(2)(B), the Court may dismiss a complaint filed in forma pauperis if the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief against a defendant who is immune from such relief. An action is frivolous if “it lacks an arguable basis in either law or in fact.” Neitzke v. Williams, 490 U.S. 319, 328 (1989). An action fails to state a claim upon which relief can be granted if it does not plead “enough facts to state a claim to relief that is plausible on its face.” Bell Atlantic Corp. v. Twombly, 127 S. Ct. 1555, 1574 (2007).

In reviewing a pro se complaint under § 1915(e)(2)(B), the Court must give the complaint the benefit of a liberal construction. Haines v. Kerner, 404 U.S. 519, 520 (1972). The Court must also weigh all factual allegations in favor of the plaintiff, unless the facts alleged are clearly baseless. Denton v. Hernandez, 504 U.S. 25, 32-33 (1992); Scheuer v. Rhodes, 416 U.S. 232, 236 (1974).

## **The Complaint**

Plaintiff brings this action under 42 U.S.C. § 1983 for alleged violations of his Eighth Amendment right to be free from cruel and unusual punishment. Named as defendants are Jason Crawford (Sergeant, Potosi Correctional Center), Tim Williford

(Correctional Officer, PCC), Ben Cosgrove (same), and Keith Hayes (same). Plaintiff seeks injunctive and monetary relief.

Plaintiff alleges that on October 2, 2006, defendants Crawford and Williford beat him while he was restrained. Plaintiff further alleges that defendants Cosgrove and Hayes were present at the incident but did not come to his aid.

The complaint survives review under 28 U.S.C. § 1915(e) and should not be dismissed at this time. As a result, the Court will order the Clerk to serve process or cause process to be served on the complaint and will order defendants to respond to the complaint.

### **Motion for Preliminary Injunction**

In his motion for preliminary injunction, plaintiff alleges that defendants have continued to assault him and have issued conduct violations to him in retaliation for filing this lawsuit. Plaintiff seeks an order from the Court directing the prison administrators to stop the assaults and to transfer him to a different facility.

In addition to responding to the complaint, the Court shall order defendants to show cause why plaintiff's motion for preliminary injunction should not be granted.

Accordingly,

**IT IS HEREBY ORDERED** that plaintiff's motion to proceed in forma pauperis [Doc. #2] is **GRANTED**.

**IT IS FURTHER ORDERED** that the plaintiff shall pay an initial filing fee of \$8.26 within thirty (30) days of the date of this Order. Plaintiff is instructed to make his remittance payable to “Clerk, United States District Court,” and to include upon it: (1) his name; (2) his prison registration number; (3) the case number; and (4) that the remittance is for an original proceeding.

**IT IS FURTHER ORDERED** that if plaintiff fails to pay the initial partial filing fee within thirty (30) days of the date of this Order, then this case will be dismissed without prejudice.

**IT IS FURTHER ORDERED** that the Clerk shall issue process or cause process to issue upon the complaint.<sup>1</sup>

**IT IS FURTHER ORDERED** that, pursuant to 42 U.S.C. § 1997e(g)(2), defendants shall reply to plaintiff’s claims within the time provided by the applicable provisions of Rule 12 of the Federal Rules of Civil Procedure.


**IT IS FURTHER ORDERED** that plaintiff’s shall show cause why plaintiff’s motion for preliminary injunction should not be granted.

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<sup>1</sup>Defendants are alleged to be correctional officers at Potosi Correctional Center.

**IT IS FURTHER ORDERED** that this case is assigned to Track 5B: Prisoner Standard.

Dated this 20th day of July, 2007.

  
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CATHERINE D. PERRY  
UNITED STATES DISTRICT JUDGE